
APPENDIX B

SFC LETTERS TO TNC

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
DON NICKLES, OKLAHOMA
TRENT LOTT, MISSISSIPPI
OLYMPIA J. SNOWE, MAINE
JON KYL, ARIZONA
CRAIG THOMAS, WYOMING
RICK SANTORUM, PENNSYLVANIA
BILL FRIST, TENNESSEE
GORDON SMITH, OREGON
JIM BUNNING, KENTUCKY

MAX BAUCUS, MONTANA
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
TOM DASCHLE, SOUTH DAKOTA
JOHN BREAUX, LOUISIANA
KENT CONRAD, NORTH DAKOTA
BOB GRAHAM, FLORIDA
JAMES M. JEFFORDS (I), VERMONT
JEFF BINGAMAN, NEW MEXICO
JOHN F. KERRY, MASSACHUSETTS
BLANCHE L. LINCOLN, ARKANSAS

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
JEFF FORBES, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

July 16, 2003

Mr. Steven J. McCormick
President and Chief Executive Officer
The Nature Conservancy
4245 North Fairfax Drive
Arlington, VA 22203-1606

Dear Mr. McCormick:

The recent articles in the *Washington Post* regarding The Nature Conservancy (TNC) posed serious questions about TNC's practices regarding land sales, purchases, and donations; executive compensation; and corporate governance, among others. In addition, the Finance Committee has begun its own independent review that has found additional areas of concern. Given TNC's varied roles as government grantee and vendor, as well as its status as a tax-exempt organization, we, as Chairman and Ranking Member of the Finance Committee, seek answers and information about certain of TNC's policies and practices. We appreciate your repeated assurances of cooperation as the Committee seeks to review TNC documents, filings, transactions and other related material relating to the following TNC programs and practices.

1. Conservation Buyer Program

The May 29, 2003 letter to Congress from TNC has an attachment that provides a description of TNC's "Conservation Buyer Projects" (CBP). In it, the TNC states that since 1990, 220 parcels of land have been sold under the CBP program.

Please provide, for each CBP transaction within the last 10 years, the following: the description and location of the relevant property; the dates of TNC's purchase and sale of the land; TNC's purchase price and its sale price for the parcel of land; the terms of the easement or other property limitation imposed on the property by TNC; the individual(s) or entity(ies) that sold the property to TNC (including SSN or EIN); the individual(s) or entity(ies) that purchased the property from TNC (including SSN or EIN); any relationship, past or present, of CBP buyers or sellers with TNC or its subsidiaries or affiliates; any donations or contributions totaling at least \$1000 made by a CBP purchaser or seller to TNC or its related organizations within two years of TNC's sale or purchase; all appraisals of the property, including appraisals made prior to TNC's purchase of the land, after an easement or other restriction was imposed, and at or after the point of sale to a CBP buyer; any analysis in the possession or control of TNC or its related organizations regarding the tax treatment of the sale or purchase; Form 8283: "Noncash Charitable Contributions" for both purchase and sale, where applicable; and, Form 8282 "Donee

Information Return,” where applicable.

Please provide all information that TNC has in its control or possession regarding any transactions with Mr. Jerry Jung, Mr. and Mrs. James Dougherty and the Wallace Family.

Please confirm that CBP is the sole program by which TNC or its related organizations have sold to non-government entities land, interests in land, or water rights that are subject to a conservation easement or option of conservation easement. If there are other programs by which TNC or its related organizations has sold to non-government entities land, interests in land, or water rights subject to a conservation easement or option of conservation easement, please describe these programs in detail. In addition, please discuss any other programs other than CBP, sales to government, Trade Land or purchase of easements in which TNC purchases or sells land or interests in land.

Lastly, the Board of Governors announced on June 13, 2003 that all CBP transactions must be “legally documented as part of the transaction.” Please explain specifically what that means and what information will be made available to the public and the IRS.

2. Government

It is our understanding that TNC sells or exchanges land or interests in land to local, state and federal government entities. For example, in its most recent Form 990 filing, TNC reports \$181 million in income from government sales.

Please provide a list of all land or interests in land sold or exchanged by TNC or its related organizations since January 1, 1998 to local, state and federal government entities. This list should include a description and location of each property; the date of TNC’s purchase and sale; the amount TNC paid for the property (note if the seller considered the sale to be a bargain sale and please provide a Form 8283 for any bargain sale or gift as well as the Form 8282 where applicable); the appraised value of the property at the time of TNC’s acquisition of the property and at the time of the sale (including proof of compliance with federal appraisal standards); the individual or entity that sold/donated the property (include SSN/EIC); the amount for which TNC sold the property; the amount (together with all appraisals) that TNC determined was the value of the property for purposes of Form 990, (e.g., in Part II, line 43 TNC listed in “Statement 8” of the 2002 Form 990 line items for “Cost of Goods Sold to Govt. - Cost” and “Cost of Goods Sold to Govt. - Gift” – (please also provide a description of what these two terms reflect); the government entity that purchased the property; and the specific source of funding that enabled TNC to purchase the property (for example, a charitable contribution from an individual; a government grant/contract; grant/contract from corporation or a nonprofit organization, etc.). Finally, for each year, please provide the total amount of income from such sales, a detailed breakdown of expenses direct and indirect related to the sales and the amount of net profit from the sales.

Please provide a list including dollar amount, brief description of purpose and identification of each grant, contract, appropriation or other financial benefit to TNC conferred by a government agency (and program, example North American Wetlands grant awards, Forest Legacy Grant awards) since January 1, 1998. In addition, please provide a similar listing for grants and contracts received from or given to the National Fish and Wildlife Foundation; the National Forest Foundation; and the National Park Foundation since January 1, 1998.

3. Trade Land

TNC has a program called "Trade Lands" that targets donations or below market sales of land by corporations and individuals for resale by TNC. Please describe in detail this program, including the number and value of gifts from corporations and individuals. Please list the ten largest gifts received (by dollar value of the claimed charitable donation) per year under this program since January 1, 1993 along with the Form 8283 and Form 8282 (where applicable). If there is no Form 8282, please provide the total amount the property was sold for, the date it was sold and identify the party who purchased the land.

4. Loans

A. Employee. Please list all loans provided to officers, federal and state board members, employees, donors, TNC contractors and TNC related organizations. Please provide the loan terms (including security and value of the security), date of issue, current status, name of loan recipient and EIN/TIN. Please provide the dates and amounts of repayment and whether there was any forgiveness of the loan.

TNC provided a home loan of \$1.55 million with a 1-year adjustable interest rate at 4.59 percent to Mr. McCormick. TNC states that this rate was "based on outside advice as to what a market rate would be." Please provide a copy of that advice. TNC states that recently Mr. McCormick has refinanced the loan with a commercial lender. Please provide a copy of the loan terms and contract.

B. Other Loans. TNC in its 2002 Form 990 reports the \$1.55 million loan to Mr. McCormick. TNC Form 990 also discloses \$26.1 million in other loans. The return provides a thumbnail description of these loans. Many of these loans are to for-profit entities or individuals. Please provide a description of all loans made (or receivable) to individuals or for-profit entities for the past ten years and include a description of any relationship between the company (including officers and directors) or individual with TNC. This description should include the original purpose of the loan, whether that purpose was met, the interest rate and payment schedule when the loan was made, the security (and value) for the loan and whether there were any changes to the terms of the loan.

Please describe in particular all of the above loans that have a 0% interest rate and all loans that defaulted or in which there was partial or full loan forgiveness. Please describe the process of TNC in approving loans, how the interest rate is determined and the material that is prepared in support of such loans.

For all loans above in A and B, where applicable, please describe how TNC and the individual complied with Section 7872 of the Internal Revenue Code: Treatment of loans with below-market interest rates. Please provide copies of all related TNC filings with the Internal Revenue Service.

5. Internal Reports, Audits and Studies

Please provide the name and contact information for the lead partner for TNC external audits since January 1, 1998. Please provide copies of all draft or final external and internal audits, evaluations and reviews conducted by or for TNC or its related organizations since January 1, 1998. In particular, please provide any such material that reviews, discusses or relates to payment of taxes (including payroll) of TNC or its related organizations, TNC or its related organizations' employees or contractors as well as any material that discusses the tax situation regarding donors, sellers, buyers or other recipients.

6. Easements

Please provide a copy of the December 4th, 2002 memo cited in the *Washington Post* that states:

"If you look at our revenues from last year, they're up from the year before, mostly due to the valuation of easements, which can be viewed as subjective and a tool we used to inflate our income."

Please provide all other information in TNC's possession or control related to that teleconference that is discussed in the December 4th memo.

In addition, for all easements above \$25,000 (as valued by the donor or purchase price) please provide a list valuing all easements purchased by or donated to TNC since January 1, 1998, including the dollar amount of the easement, where the land was located, and the identity of the donor or seller. Please note all easements purchased or donated that involved officials, governors, or trustees of TNC or its state affiliates.

7. Board Membership and Organization

Please provide a current list of all officers, directors, board members of TNC (state and national) or its related organizations. In addition, please include the current reorganization chart and bylaws of TNC and any related organizations. Please include a list of all other for-profit and

non-profit organizations that these individuals serve as employees, officers, directors, board members or similar capacity.

Finally, please provide a list of all TNC (state and national) board and staff who serve on federal and state government boards. Please note those federal and state boards that award grants or contracts to TNC.

8. Executive Compensation

Please provide TNC's Form 990 for the last 10 years. In addition, please provide the minutes of the Compensation Committee or Board of Governors meetings relating to compensation (including loans) for officials listed in Form 990 since January 1, 1998, as well as all employment contracts for these individuals. Please provide a detailed discussion, including value, of any deferred compensation programs that TNC or its related organizations operates for any of its employees.

9. President's Discretionary Fund

The Committee would like information regarding the policies and procedures with respect to the President's discretionary fund (and its successor the Quick Strike Fund). Please explain how funds become part of the discretionary fund; whether there are or have ever been any limitations on the amount of money in the discretionary fund; who can authorize the fund's use; and any limits on the use of the funds. In addition, please provide all yearly statements indicating the amount of money in the fund since January 1, 1993, and an accounting of the fund's use since January 1, 1998, including a description of each withdrawal; for what purpose the withdrawal was made; and the names of the recipient (please note any relationship to TNC). Please provide the source of funding for the discretionary fund year-by-year since 1993.

10. Major Donations/Sales/Exchanges of Land

Please provide since January 1, 1998 year-by-year the top ten donations by value (including bargain sales) of land to the TNC or its related organizations. Please provide the EIN/TIN of the entity or individual making the donation, the location of the land, the value of the land at the time of the donation, as well as relevant Forms 8283 (and Form 8282 where appropriate). Please provide the current status and use of the donated land, including whether the land has been sold by TNC and, if so, the date and amount of TNC's sale.

11. Valuation

The *Washington Post* quotes a TNC state trustee regarding charitable deductions:

"Generally, the buyer puts too much value on it [for tax purposes]. Land donators almost always try to value their land at more than the [true] value. **This is a business.** We sort

of wince and look away at some of the values buyers put on these transactions. We're not the IRS." (Emphasis added).

Please provide TNC's viewpoint on this statement.

12. Related Organizations

Please describe the activities of all TNC-related organizations cited in the most recent Form 990 for the last five years. Please provide a copy of the Form 990 for related nonprofit organizations and a copy of the tax return for related for-profit organizations for the past five years. In addition, please provide for the last five years TNC's Form 990-T and the Form 990-T of related organizations.

13. Travel, Conferences, Meetings and Other

The most recent Form 990 filed by TNC shows that TNC spent over \$13 million dollars on travel, conferences, conventions and meetings. Please provide a description (including dollar amount, location, hotel) of each activity with respect to which more than \$2,000 was spent on behalf of an individual since January 1, 2002. Finally, please provide a detailed breakdown of the \$23 million dollars in "other expenses" listed in the Form 990 for 2002.

14. Transactions With Board Members

Please list all land transactions between TNC and any Trustees, Governors, or staff (national and state) since January 1, 1998. Please provide copies of all material that was submitted to any TNC Board (national and/or state) for determining their approval. Please also provide any board minutes regarding these decisions. Finally, please provide the same information for each of these land transactions as was requested for CBP transactions in #1 above.

15. Conservation

TNC states to the Washington Post that it consulted with the U.S. Fish and Wildlife Service regarding the drilling for gas in Texas. Please provide copies of all material related to that consultation.

16. Litigation

Please provide the names of the parties, a brief description of the issue, the date of settlement or court order and the amount paid by TNC or its related organizations to settle or resolve all litigation or potential litigation since January 1, 1998. Please provide this information only where total cash value of payments were over \$50,000.

17. Grants

The Form 990 fails to provide a list of grantees. For the last five years provide a list of each grant, the dollar amount (as well as noncash amount), the recipient and purpose of the grant. In addition, please note any relationship with TNC and its related organizations, board, officers, employees, etc. Finally, provide all other information required under the instructions for Form 990 published by the IRS: "Specific Instructions for Form 990."

18. Cash Donations

Please list the name and address of all donors – both individuals and business entities – who provided a cash donation of \$50,000 or more in any year since January 1, 1998.

Please provide the requested information by August 18, 2003. We would suggest that as information to separate questions is completed it should be forward without awaiting answers and information for all questions. We recognize that some of the information requested is sensitive and will work with TNC in ensuring protection of such identified information.

If you have any questions, please contact Mr. Dean Zerbe at (202) 224-5315 or Mr. Pat Heck at (202) 224-4515, tax counsels for the Finance Committee.

Cordially yours,



Charles E. Grassley
Chairman



Max Baucus
Ranking Member

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
DON NICKLES, OKLAHOMA
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RUSSELL SULLIVAN, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

October 27, 2004

Mr. Steven J. McCormick
President and Chief Executive Officer
The Nature Conservancy
4245 N. Fairfax Drive, Suite 100
Arlington, VA 22203

Dear Mr. McCormick:

We are writing to you in regards to our continuing review of The Nature Conservancy (TNC). We ask for your response to the follow-up questions below:

1. Please explain the meaning of footnote 15 to the letter dated April 15, 2004, page 14. Did TNC (or the donor) receive private letter rulings from the Internal Revenue Service for any conservation easement modification prior to the time that TNC adopted the new procedure? If so, attach a copy of all private letter rulings received. Also, did TNC receive approval for a modification of a conservation easement from a state authority that provides oversight of charitable organizations after the new procedure was effective in 2003? Please attach a copy of all such state approvals (including any court approvals).
2. TNC's answer to question VI.6. mentions "informal discussions with the IRS" and "additional consultations with representatives of the National Office of the IRS." Generally, guidance by the IRS to individual organizations or taxpayers is in the form of private letter rulings or nonbinding "general information letter." Please discuss the nature of the discussions or consultations with the IRS.
3. Is the stewardship fund of TNC established for the enforcement of easements held in an account bearing the name or other identifying feature of the easement to which it relates, or is the fund simply one or several large funds covering all or many of the TNC easements? Please discuss your answer.
4. How much money is deposited in a stewardship fund of a conservation easement?
5. What formula does TNC use for providing or establishing a stewardship fund for a conservation easement?
6. Which of the 75 conservation easement modifications were requested by the land owner and which were requested by TNC?

7. Attach written reports to monitor conservation easements for the ten largest and the ten smallest conservation easement properties in each of Florida and Pennsylvania since 1998.
8. You failed to answer part of question VI.16. Is the easement appropriate since Mr. Milliken was encroaching on the land? How much of the driveway and fence (and landscaping) were an encroachment on the land (discuss area of these improvements as to the total area 1.67 acres)? Please respond.
9. Did TNC send the Committee the memorandum of March 15, 2001 from the firm of McCutchen Doyle, described in footnote 14, page 13 of the letter dated April 15, 2004? If not, please provide it.
10. Please discuss the prior and/or existing relationship of PricewaterhouseCoopers LLP (PwC) to TNC. Did PwC have a relationship with TNC prior to the January 31, 2001, analysis PwC prepared for TNC on executive compensation? If so, please discuss. Did PwC in 2001 have an ongoing relationship with TNC providing tax, accounting, consulting, or other services to TNC? If so, please describe. What payments were made for Services rendered by PwC to TNC?

The questions hereunder are in reference to responses submitted to the Committee by The Nature Conservancy in April, 2004. We again ask for your response to the following:

11. Functionally related revenue (Question 1 of March 3, 2004, letter).
 - Please provide a complete description of each of the activities listed in Tab 1, Analysis of Income Producing Activities, to supplement your response to this question.
12. Emissions credit arrangements.
 - Provide an explanation and documentation demonstrating compliance with TNC's conflicts of interest policy with respect to the GM-TNC Brazil Emissions Agreement (described in TNC's Forms 990 for 1999 through 2001) in which Mr. Smith participated as an officer of General Motors Corporation and its Brazilian affiliate.
 - Did TNC seek the advice of outside counsel with respect to the tax consequences to TNC of the emissions credits transactions, or in the case of the GM emissions arrangement, any conflicts of interest issues?
 - Please describe TNC's position regarding the tax consequences to TNC of the GM emissions arrangement.
 - Provide a description of the AEP-TNC-Pacific Corp-BP-Bolivia emissions arrangement relating to a Bolivian tropical forest, the 1997 Noel Kempff

March 3, 2004

Mr. Steven J. McCormick
President and Chief Executive Officer
The Nature Conservancy
4245 North Fairfax Drive
Arlington, VA 22203-1606

Dear Mr. McCormick:

We appreciate the cooperation of The Nature Conservancy (TNC) with the Finance Committee's independent review of TNC's activities, transactions and practices. This letter is a follow up regarding certain information the Finance Committee received from the first round of questions. Further, some questions (noted as such at the end of this letter) relate to new issues not raised in our earlier letter dated July 16, 2003.

I. Conservation Buyer Program

1. Identify each and all of the TNC conservation buyer transactions for the ten year period described in our letter of July 16, 2003 (whether related party buyers or non-related buyers), that involved a charitable donation or charitable pledge made to TNC by the purchaser within a time frame beginning 6 months prior to closing on the land purchase from TNC and ending two years after the land purchase. For each such transaction list the amount and date(s) of payment of the contribution or pledge; attach a copy of the charitable pledge documentation; and attach any paperwork associated with the charitable gift— to the extent such information was not already provided in response to our prior letter.
2. In response to question 1, above, if the information has already been provided to us, indicate where each item may be found in such materials, including transaction number.
3. Questions regarding the Davis Mountains, Texas property transactions:

The Nature Conservancy

- a. Did Caroline Alexander (also called Forgason) make a charitable pledge (or charitable contribution) with respect to the transaction for the 5,854 acres on or about December 22, 1997?
- b. Why did Caroline Alexander give back to TNC the land she had purchased two years before? Why did she give back just part of it and not all of it?
- c. Was there anything different about the land she kept as opposed to the land she gave back such as an improvement of the land, or a special feature of the land retained (or given up)?
- d. What did Caroline Alexander end up paying for the land she retained? Was it approximately the sale price of \$1,160,834?
- e. Did Caroline Alexander pay the \$5,426,632 purchase price for the 27,133 acres? If not, what did she pay?
- f. Did Caroline Alexander pay the \$2,839,717 for the charitable pledge she made? If not, how much did she pay? When were payments made on the pledge?
- g. Did Caroline Alexander hold a position with TNC as a director, officer or employee? If so, discuss her position, her term with TNC, whether she continues to have a relationship with TNC, and, if so, in what capacity.
- h. Attach all correspondence and other communications, including e-mail and any memos that relate to the purchase of Davis Mountains property by Caroline Alexander.
- i. Please provide a copy of the January 31, 1992, opinion letter to Mike Dennis from Steptoe & Johnson, referred to in the January 29, 1997, letter from David Bland to Catherine W. Wilkinson of Steptoe & Johnson, regarding charitable contribution deductions for premiums paid for real property and donations of appreciated stock to pay the premium portion of the purchase price.

4. Questions regarding the Shelter Island (Thompson Hill) transaction:

- a. The value of the conservation easement was appraised at \$1,594,000.00 as of October 28, 1999. When was this information conveyed to the TNC and the Dougherty's?
- b. Did the Gerard family donate part of the land that now makes up Mashomack Preserve? If so, how much land and what percentage of the total? What was the then value of the gift?
- c. If yes to question b, above, describe the size nature and environmental importance of the Mashomack Preserve. Is TNC the owner/trustee?
- d. The memo of August 6, 1999, from the TNC counsel to Jim Dougherty suggests that Dougherty may be required to pay interest via the charitable pledge if the pledge is not fulfilled by a certain date. Did the Dougherty charitable pledge that was actually made to TNC consist of a portion that may be considered attributable to an interest element? If so, please discuss in detail.

The Nature Conservancy

- e. Did any of the sellers of the Thompson Hill property take a charitable deduction for a bargain sale of the Thompson Hill property? If so, please discuss and attach any relevant documents.
 - f. State the date and the amounts actually paid and/or to be paid by the Doughertys pursuant to the charitable pledge with TNC.
 - g. Did TNC market or offer for sale the Thompson Hill property to any persons other than the Doughertys. If so, please discuss in detail. In this regard, discuss the letter of TNC dated February 14, 2000, that stated that there were several interested conservation buyers to the Thompson Hill property. Were other buyers contacted about the property by TNC? Please provide any relevant documents relating to other buyers or any other offers.
 - h. If TNC did not actively market the property to potential purchasers other than the Doughertys, why did it fail to do so? Discuss in detail.
 - i. Was it TNC or the Doughertys that knew of the valuation expert and engaged his services for the appraisal of the conservation easement? Is there documentation that confirms or supports your answer?
 - j. Are there any other documents or other files in TNC's possession relating to conversation or correspondence that TNC had with Dougherty, especially regarding Dougherty's intentions to make a charitable contribution? Does TNC disagree with Dougherty's statements regarding his intent that were contained in the Post article? Please provide copies of the cancelled checks issued by Dougherty to TNC with respect to shi transaction.
5. Lake Huron Transaction. It appears that TNC's approach to the sale of property to Jerrold Jung of the land located in Mackinac County, Michigan, is different than some of the other conservation buyer transactions involving related parties. In Shelter Island, New York; Davis Mountains, Texas; and Gerrard County, Kentucky TNC received from each purchaser consideration from the sale and a charitable pledge or donation that was very roughly equivalent (in the aggregate) to the amount TNC paid for the acquisition of the property later transferred to the conservation buyer. In the sale to Jerrold Jung, the charitable donation of \$650,000 made to TNC plus the consideration from the sale of the property of \$1,062,000 paid to TNC was considerably less than TNC's purchase price to the property of \$2,277,730 allocated pro rata to the Jung portion of the transaction. Please comment. If you agree there is a difference in treatment, please explain why it was treated differently. To the best of TNC's knowledge, did Larry Harmon ever claim any charitable contribution deductions with respect to either the Shillingburg or the Chi-Mac tracts? If so, what amounts and on what basis? What was the total charitable contribution deduction claimed by Jung relating to the acquisition of the property from, and grant of conservation easement to, TNC (individually or through the trust), and describe whether it was cash or property? Please confirm that Shillingburg did not claim a charitable contribution deduction with respect to his sale of property to TNC, despite TNC's letter to Shillingburg saying it was a bargain sale and providing a blank Form 8283. Please confirm

The Nature Conservancy

that to the best of TNC's knowledge, Chi-Mac claimed a charitable contribution deduction of \$98,700, the amount reported on the Form 8283.

6. Please provide a copy of the resolution or other written action dated June 13, 2003, supporting the Board of Governors decision that "all charitable gifts associated with a conservation buyer transaction must be legally documented as part of the transaction."
7. Please provide a schedule including the following information regarding CBP sales by TNC for each of TNC's 5 most recent fiscal years: aggregate sales proceeds for CBP sales closed during the year; aggregate charitable contributions received and pledged with respect to CBP sales closed during that year; aggregate of sales proceeds, charitable contributions, and pledges with respect to CBP sales closed during the year; aggregate FMV of conservation easements and conservation restrictions placed on CBP property sales closed during the year.
8. Please provide a list of lawyers, accountants, and other outside counsel who have provided tax opinions or other tax advice to TNC with respect to the tax consequences to TNC or other parties to TNC's CBP transactions (whether with respect to actual or hypothetical transactions); please provide a copy of such opinions and written advice.
9. Has TNC ever entered into agreements with buyers of conservation buyer program properties that TNC will indemnify or reimburse the buyer for lost tax benefits from the loss or reduction of the charitable contribution deduction claimed by the buyer?
10. Martha's Vineyard transaction: Please provide a narrative description of the Martha's Vineyard transaction, addressing all material aspects of the acquisition and disposition of the properties by TNC and the charitable deductions claimed with respect to these properties. In your narrative, identify all parties to the transaction, and describe their respective roles in the transaction. Also, identify and describe each material transactional document (e.g., purchase agreements, the tax indemnification agreement dated June 29, 2001, between TNC and HCAC). Further, discuss the Washington Post's description of the transaction in its May 6, 2003, article, and explain whether you agree or disagree with the Post's description of the transaction in that article.
11. Please provide the names and complete mailing addresses (most recent in your files) for each of the approximately 170 conservation buyers' program buyers for whom you previously provided documentation to the Senate Finance Committee.

II. Government— Transactions Regarding Land Sales

The Nature Conservancy

1. The TNC response to question 2 (of the July 16, 2003 letter) contains a summary of government transfers of \$500,000 or over which is supported by the more detailed list. What was the price paid by the government for each land transaction listed? Is the total of the "Land Cost Recovery" and the "Other Cost Recovery" columns under the "SALE" heading equal to the purchase price paid by the government?
2. With respect to the summary list described in the preceding question, identify and itemize the costs, in summary form, that make up the "Other Costs" column under the "PURCHASE" column. We are requesting a description of the costs generally, not a numerical calculation of each line item. Include in your answer a discussion of whether these costs consist only of tax basis costs (closing costs and land improvement costs) or also include annual maintenance costs such as taxes, insurance, maintenance, non capital improvements, and the like. Confirm that your answer is equally applicable to the "Other Costs of Acquisition and Disposition" column of the detailed Government Transfers list (not the Summary) provided in answer to question 2 of the July 16, 2003 letter.
3. Discuss generally whether TNC makes a profit on some of the land sale transactions with governments. For example, line item 35 on your summary list would seem to indicate that TNC made a profit of over \$1,300,000 on the sale. Discuss that transaction in detail including the appraised value of land at the time of acquisition of \$7,100,000 (being greater than the sale amount). Are there other transactions like this one, including state and local transactions as well as federal transactions of any size? If so, itemize each transaction providing the information previously requested for this question by the Committee.
4. Provide a new summary list adding to and modifying the existing list you provided. Modify the list to indicate under one column the purchase price paid by the government for the property. Also, on that same list, and consistent with your answer to question 2, above, provide detail of costs under the "Other Costs" column, separating tax basis costs from other types of costs, if applicable.
5. Based on your narrative answer to question II. 2 above, we understand that the amounts appearing under the "Amount Donated to Government" column are being reported in cost of goods sold. Is our understanding correct? Also indicate how the "Amount Donated" column was treated for financial statement purposes.
6. It is our understanding that the information provided on your lists in response to question 2 regarding land transfers to the government over \$500,000 represents only Federal transactions as so limited. We assume that amounts reported on Form 990, Part VII, line 93c also consists of other categories such as Federal transfers under \$500,000, state and local transfers, Indian tribal government transfers, or foreign government transfers. Please confirm this understanding and discuss. Provide a breakdown of amounts reported on line 93c for each of the categories; Federal transfers under \$500,000, state and local transfers, Indian

The Nature Conservancy

tribal government transfers, or foreign government transfers; for the three most recent 990s by TNC filed with the IRS and related cost of sales information.

7. Provide detailed information and numbers on the following transactions using exactly the same format as provided in your response to question 2 of our prior letter dated July 16, 2003, the detailed list titled "Government Transfers The Nature Conservancy – All Interests in Land Sold, Donated, or Exchanged from July 1, 1997 to June 30, 2002 to Federal Government Agencies \$500,000 or Over."
 - a. The 100 largest property dispositions (based on FMV of property transferred) by TNC of properties that were transferred to State and local governments (of the 7039 transactions reported on the schedules TNC has already provided).
 - b. If the following are not included in your response to the preceding question, provide similar information pertaining to Virginia Coast Reserve, VA (Nos. 416-420); Virginia Eastern Shore Megasite, VA (Nos. 421-423); Herring Creek Farms, MA (Nos. 604-607); Mashomack (Shelter Island), NY (Nos. 1027-28); Kentucky River Palisades, KY (Nos. 3617-3623); and Davis Mountains, TX (No. 5856). Is there any connection between the last four items and the conservation buyer transactions – related parties detailed in your answer to question 1 of the July 16, 2003 letter? If so, please discuss.
8. Provide aggregate information in the same format requested for the preceding question and a narrative summary of the project for each of the following projects listed in the sales to State and local governments: Big Cypress National Preserve, FL (Nos. 1465-1608); Big Cypress Preserve, FL (Nos. 1609-1638); Big Pine Key, FL (Nos. 1645-1816); Wisconsin Scientific and Natural Area Dedication, WI (Nos. 4582-4757); Lower Ozark Reserve Megasite, MO (Nos. 5263-5336). In addition, please provide all information in TNC's control or possession dealing with Big Cypress National Preserve and Big Cypress Preserve.

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9. Why are land recoveries less than acquisition and transaction costs in so many cases, resulting in book losses from sales? Is there a potential concern that TNC paid too much for the land (e.g., from a related party) and couldn't recover the cost from the government?
10. Regarding the schedules previously provided for sales by TNC to Federal agencies (over \$500,000), please provide a description of each of the column headings in the Federal agency sale schedule.
11. How does TNC identify properties for sale to governments? Does the process differ depending upon whether the buyer is the Federal or a State/local government?

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12. How does TNC identify government buyers for these properties? Are the identities of the government buyers generally known before TNC acquires the properties?
13. Is TNC provided Federal (including Fish and Wildlife Foundation), state or local government grants that are earmarked to acquire properties that are later sold to Federal, state or local governments?
14. Describe TNC's charitable mission in selling large tracts of land to government agencies. Include in your answer a discussion of whether the mission varies depending on whether the government is Federal, state or local government. Estimate the percentage of the land being sold that consists of property that may be described as serving a significant environmental or biodiversity purpose. Include in your discussion whether for each land transaction TNC has prepared a written report establishing such purpose. Indicate what portion of the government land sales consists of government requests prior to TNC's acquisition of the land, and what portion consists of property transfers not originally requested by the recipient government agency prior to the TNC acquisition. Do any of the transactions involve land that has primarily a recreational purpose? If so, do you consider that purpose coming within TNC's exempt purpose or activity?
15. Please provide a list of lawyers, accountants and other outside counsel who have provided tax opinions or other tax advice to TNC with respect to the tax consequences to TNC or other parties to government land sale program transactions (whether with respect to actual or hypothetical transactions); please provide a copy of such opinions or written advice.

III. Trade Land

1. Has TNC ever entered into agreements with donors of trade land properties that provided TNC will indemnify or reimburse the donor for lost tax benefits from the loss or reduction of the charitable contribution deduction claimed by the donor? If so, please provide a copy of each such agreement.
2. Why was revenue from the sale of trade lands reported on the 2001 Form 990, Part VII, line 93d, but no revenue was reported for sale of trade lands on that same line for Form 990 for 1996 through 2000.
3. Please provide a list of lawyers, accountants and other outside counsel who have provided tax opinions or other tax advice to TNC with respect to the tax consequences to TNC or other parties to trade land program transactions (whether with respect to actual or hypothetical transactions); please provide a copy of such opinions or written advice.

IV. Loans

V. Internal Reports, Audits, and Studies

VI. Easements

1. State the number of conservation easements held by your organization as of December 31, 2003. As of December 31, 1993.
2. Is there on file with your organization a copy of each deed or other legal document that grants or establishes the conservation easement granted in favor of TNC? If so, describe how they are maintained. For example, is there a central file or are the files held in local offices? Are there any properties for which a copy of the conservation easement deed is missing or not immediately available to TNC? If so, state how many.
3. State in detail your practices, policies, and procedures for monitoring landowner compliance with the terms of an easement granted to TNC. Include in your answer how frequently you inspect the property or contact the landowner. Does your policy on monitoring the easement vary with respect to the size of the property subject to easement or the importance of the easement for conservation of the environment? Attach copies of TNC reports to monitor conservation easements for the ten largest and the ten smallest conservation easement properties in each of Ohio and California since 1998.
4. State how often TNC has engaged in litigation to enforce a conservation easement granted to it over the past ten years. For each such instance, describe the litigation briefly and discuss the outcome of such litigation.
5. Does TNC have a written policy or a general rule of thumb (written or unwritten) regarding when it will engage in litigation to enforce a conservation easement granted to it? If so, please attach a copy of the written policy, or describe any unwritten policy.
6. Explain the practices, policies, and procedures of TNC for granting a modification or amendment of a conservation easement held by or for the benefit of TNC? If there is a written policy, please attach a copy.
7. The easement modification chart submitted December 11, 2003, suggests that a number of conservation easement amendments or modifications would appear to benefit the landowner. Please describe in detail the easement adjustments provided for items 3, 4, 5, 6, 7, 8, 13, 14, 19, 20, 21, 26, 28, 29, 39, 44, 51, 56, 60, 61, 64, 65, 67, 70, and 74 of such chart. Discuss how TNC views such modifications as either benefiting or not benefiting the landowner. For each item, attach a copy of the easement before amendment and a copy of the easement after amendment, and provide a narrative discussion of the changes made.
8. Does TNC monitor and record changes in ownership of property subject to conservation easements granted in favor of TNC? If so, does TNC contact the new owner by letter or otherwise and impress upon such owner the obligations

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under the conservation easement? Please attach a copy of (a) any recorded effort to track such changes in ownership, and (b) any notice to new owners regarding easement obligations.

9. Please respond to assertions or concerns regarding conservation easements as follows: (i) How many easements has TNC written off as unenforceable or of little value? (ii) Please provide a list of any such write-offs including the name of the owner of the property subject to the easement and the location of the property. (iii) Does TNC fail to enforce easements where it is aware of violations because of the cost of litigation relative to the worth of the easement in question? Please discuss your answer. (iv) Is TNC concerned that over time, with change in ownership, new owners not having conservation goals may violate easements in large numbers? Please discuss. (v) How does TNC defend its conservation easements on small tracts (from less than one acre to up to 2 or 3 acres) where monitoring and enforcement of easements is more difficult economically? Please discuss.
10. Regarding the 78 transactions exceeding \$1 million for fiscal years 1998 through 2002, how many of these were (1) purchases at fair market value, (2) bargain purchases, and (3) donations? Please identify each of the 78 transactions as being in one of these three categories.
11. Please provide supporting Forms 8283, and where applicable, Forms 8282, for these 78 transactions.
12. Does TNC use easement valuations to minimize book losses, or enhance book gains? Please explain how TNC's financial statement treatment with respect to valuation of easements (whether acquired by purchase or by donation, or by other means such as by TNC creating the easement as a part of an acquisition or disposition of property by TNC) complies with accounting standards applicable to TNC and to nonprofit conservation organizations.
13. Please provide documentation to support TNC's statement that it has advised donors in writing "that the donor's proposed claim for that value may be excessive" if "TNC is made aware" the donor's proposed claim of FMV is "clearly and significantly in excess of what would seem to be a reasonable value." Please provide copies of all such letters sent within the last five years.
14. Please provide the names and complete mailing addresses (most recent in your files) for each of the first 50 persons who contributed conservation easements to TNC during calendar years 1999, 2001, and 2003.
15. Your response to our letter of July 16, 2003, included a chart of "Conservation Easement Purchases and Donations" greater than \$1 million. Item 14 of the chart lists a site name of "San Joaquin Hills Portfolio" with a listed fair market value of the easement of \$2,016,100. Item 15 of the chart, the same site, lists a fair market

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value of the easement of \$16,376,300. Item 16, the same site, lists the fair market value of \$17,685,000. Item 17, the same site, list the fair market value of the easement as \$89,415,400. All four easements were provided by the same company. As to all four items please provide all information in your files relating to these transactions including, but not limited to, appraisals, identification of the grantor, identification of the property, the charitable donation claimed, a copy of forms 8283, copy of deeds, copy of e-mail, letters, memos, and provide a narrative description of the transfers and the environmental purpose and significance of the property.

16. An example of a small conservation easement is the conservation easement placed on 1.62 acres on land transferred to David and Laura Milliken with respect to New Mexico – Santa Fe Canyon Preserve. Is an easement appropriate since the Millikens were encroaching on the land? How much of the driveway and fence were an encroachment on the land? Could TNC have sold a sliver of land outright that covered the area of encroachment? Does this easement serve a conservation goal?
17. Please provide a list of lawyers, accountants and other outside counsel who have provided tax opinions or other tax advice to TNC with respect to the tax consequences to TNC or other parties regarding the acquisition or granting by TNC of conservation easements or similar conservation restrictions (whether with respect to actual or hypothetical transactions); please provide a copy of such opinions or written advice.

VII. Board Membership and Organization

VIII. Executive Compensation

IX. President's Discretionary Fund

X. Major Donations, Sales, Exchanges of Land

XI. Valuation

Please provide copies of documentation to support TNC's statement that "TNC has given the donor notification in writing as part of the Form 8283 that there are serious concerns with the donor's valuation." Please provide copies of all such letters sent within the last 5 years.

XII. Related Organizations

1. The Report to Management for the year ended June 30, 2002, states that in several instances, separately created legal entities or relationships that may be controlled by TNC were created without the prior approval of the Headquarters Office, in violation of the organization's policies and procedures. Please provide any documentation pertaining to your response or follow-up to the recommendation made in the Report to Management for the year ended June 30, 2002, that you "enforce policies and procedures for identifying related parties, monitoring the

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status of the relationships, and receiving current financial information to properly account for these entities.”

2. Conservation Beef, LLC (CBL):

- a. Please provide the LLC’s organizational documents including agreements, and all amendments thereto.
- b. Explain the parties’ agreement regarding capital, profit, and loss allocations. Why is TNC only a 50% owner of capital, profits and losses, when to date it has contributed 72% of the capital to CBL? Why hasn’t AWF made any capital contributions to CBL since 2000?
- c. Please provide a copy of the IRS determination letter for AWF.
- d. Please provide a copy of AWF’s most recent Form 990.
- e. How did you select AWF as your co-venturer for this project?
- f. For fiscal year ended 2000, line 20 other deductions on Form 1065, explain “loss allocation to exempt purposes” in the amount of \$372,512.
- g. Please provide a copy of CBL’s 2003 Form 1065, when available. Please provide copies of CBL’s financial statements for 1999 through 2002.
- h. Who are the participants in CBL’s retirement plan? Why did contributions to the plan increase from \$8,661 in 2000 to \$16,387 in 2002?
- i. Who provided the \$40,000 loan to CBL in 2002? Was TNC a lender or guarantor?
- j. Explain in detail the LLC’s activities and mission, and explain how they substantially further TNC’s exempt purposes.
- k. The article in the Washington Post describes the use of the brand name “Conservation Beef” by TNC, a brand name that is co-owned by TNC and the Artemis Wildlife Foundation. The Post article provides, in part that the program was used to bolster imperiled cattle ranches, and, along the way, entice ranchers into environmentally friendly grazing practices.
 - Provide a general description of the Program involving use of the brand name “Conservation Beef.” Include in your answer whether TNC realized any profit or loss from this program for the period beginning in 1999, and if so, how much profit or loss was realized each year?
 - Attach copies of the contracts with all interested parties such as, the ranchers, the co-owner(s), the marketing agent. Attach copies of financial reports beginning with 1999.
 - How did TNC report its distributable share of losses from this program or entity on its Form 990 or 990T for the years beginning in 1999?

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3. Nature Serve (Formerly the Association for Biodiversity Information) (ABI):

- a. Please provide a copy of the July 1, 1999, agreement between ABI and TNC, and any subsequent amendments thereto.
- b. Please provide a copy of ABI's governing instruments and organizational documents, and amendments thereto.
- c. Please provide a copy of ABI's determination letter.
- d. Did TNC report its fee income from its ABI agreement dated July 1, 1999, as unrelated business income? If not, why not?
- e. Please provide a copy of the TNC line of credit arrangement with ABI (see note 2 of the 2000 financial statements).
- f. Explain how TNC's agreement with ABI substantially furthers TNC's exempt purposes.
- g. What was the purpose of TNC's contributions to ABI in the annual amounts of \$966,264; \$5,395,311; and \$4,690,800 for 1999, 2000, and 2001, respectively?
- h. Why did the organization respond to Questions 84a and 84b as "N/A" in its Forms 990s (regarding soliciting contributions)?
- i. Describe any affiliations with the independent contractors listed on Schedule A of Form 990, and specific information regarding the nature of services rendered by the contractors.
- j. Why did the number of employees increase from 4 in 1999 to 91 in 2000?
- k. Explain why the data base service fees received in 2000 (\$75,488) and 2001 (\$168,191) are not unrelated business income to ABI? NOTE: Required explanation was not provided on Form 990, Part VIII Schedule for 2000 or 2001.
- l. Provide a copy of the organization's financial statement for 2002.

4. Eastern Shore Enterprises, LLC

- a. Certain persons other than TNC received profits or capital interests in Eastern Shore Enterprises LLC. Describe the terms and conditions under which the following persons received LLC interests, and explain whether such persons were treated by the LLC as having received a partnership capital or profits interest other than in a tax-free transaction: Suzanne Wescoat; Franny Parr & Muha.
- b. Did any other persons ever hold interests in the LLC?
- c. Please provide copies of any agreements relating to the acquisition by Franny, Parr and Muha, and Suzanne Wescoat of LLC interests.
- d. Please provide corrected partnership profit, loss, and capital percentage information for 1999 (K-1s total to more than 100% capital interests).
- e. Provide detail of "other deductions" for each of 2000 through 2002; there is no breakdown in the return.

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- f. Describe the relationship between Eastern Shore Enterprises LLC and Virginia Eastern Shore Sustainable Development Corporation, beginning with the LLC's formation.
- g. Did any members other than TNC ever make capital contributions to the LLC?

5. Virginia Eastern Shore Sustainable Development Corporation (VESC)

- a. Who were the eight shareholders of VESC, and what were their respective holdings at all times they were shareholders? Who was offered an opportunity to participate as a shareholder of VESC?
- b. Please provide copies all shareholder agreements, subscription agreements, and organizational instruments, including amendments thereto.
- c. Who provided shareholder capital to the corporation and at what times and amounts?
- d. Please provide copies of the loan documents pertaining to the corporation's long-term debt, and describe the organization's relationships with the following lenders, The Ford Foundation, the Mary Flagler Cary Charitable Trust, and the Lincoln-Lane Foundation.
- e. Please provide copies of any royalty agreements pursuant to which the organization incurred royalty expenses.
- f. Please provide copies of Forms 1120 for 1995 through 1997.
- g. Please provide a copy of any notes receivable from TNC as obligor, to the corporation, as holder (e.g., \$80,000 relating to the Mill Creek Farm land transaction). Confirm all debt owed by TNC was paid on or before the corporation's liquidation in late 1999 and early 2000.
- h. Describe the corporation's "investment in Waterside Capital" in the amount of \$50,000. Describe any relationship between TNC or VESC and Waterside Capital and its principals.
- i. Please provide a list of shareholder capital contributions by date, shareholder, and amount, from 1995 through 1999. Describe any corresponding changes in shareholder ownership percentages.
- j. The 1999 Form 1120 reports debt forgiveness income of \$798,775. Who held the debt, and describe the negotiations that took place to ultimately cancel the debt without repayment.
- k. Describe the corporation's investments in real estate.
- l. State which shareholders were Class A and Class B shareholders. Describe the differences in rights and obligations between the two classes.
- m. What was TNC's role in organizing the corporation?
- n. Please provide a copy of the corporation's Board resolution dated October 1999 to liquidate the company.

6. Adirondack Land Trust (ALT)

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- a. Please provide a copy of the Memorandum of Understanding dated October 3, 1988, between TNC and ALT, and any amendments thereto. Why did TNC enter into this arrangement, and why does it continue to be involved in this relationship?
- b. Why are all ALT employees also employees of TNC?

7. STN/TNC LLC (STM)

- a. Describe the purposes and activities of STM from its inception in 1993 through the present.
- b. STM has two members: TNC (34.6762%), and Sumner T. McKnight Foundation (65.3238%). What is the relationship between TNC and the McKnight Foundation?
- c. Explain STM's relationship to the Virginia East Coast Sustainable Development Corporation or its projects.

8. The Forest Bank, LLC

- a. Please provide a copy of the LLC's Board resolution authorizing liquidation of the LLC, and information regarding the payment of liabilities and the distribution of the LLC's assets upon liquidation.
 - b. Please provide a copy of the SEC registration materials pertaining to registration of the LLC's membership interests with the SEC.
 - c. Please provide a copy of the organization's organizational documents and governing instruments, including amendments thereto.
 - d. Please provide a copy of any subscription agreements or materials pertaining to the LLC membership interests.
 - e. Why was the LLC organized in 2001?
 - f. Why was the LLC liquidated in November 2002?
 - g. Please provide a description of the LLC's legal expenses of \$186,272.88 in 2001.
 - h. The 2001 Form K-1 lists TNC as the 100% owner. Why did TNC and the LLC take the position that this was a partnership for Federal income tax purposes, rather than an association taxable as a corporation or a disregarded entity?
9. Please provide a list of lawyers, accountants, and other outside counsel who have provided tax opinions or other tax advice to TNC with respect to the tax consequences to TNC or other parties regarding TNC's relationships with, and activities conducted by, TNC's related organizations; please provide a copy of such opinions or written advice.

VIII. Travel, Conferences, Meetings, and Other**XIV. Transactions with Board Members**

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1. Discuss in detail all the land and service transactions between TNC and Georgia Pacific Corp., International Paper Co., and Orvis Services Co., or their subsidiaries, while an executive of these companies sat on TNC's Board of Governors or Leadership Council. In discussing your answer, include the following:
 - a. Identify the period that the executive of each company sat on the TNC Board of Governors or Leadership Council.
 - b. Identify each particular transaction with each company in a gross amount of over \$200,000.
 - c. State whether TNC realized a gain or a loss on each transaction with such companies identified in your answer to the preceding question.
 - d. Describe TNC's Leadership Council and discuss its official function with TNC.
2. Identify similar large transactions with other corporations having an executive serving of TNC's Board of Governors at the time of the transaction, beginning in 1998 to the present.
3. Please provide a list of lawyers, accountants and other outside counsel who have provided tax opinions or other tax advice (including opinions or advice regarding compliance with relevant conflicts of interests requirements) to TNC with respect to the consequences to TNC or other parties regarding transactions between TNC and its board members, trustees, officers, executives or local chapter officials; please provide a copy of such opinions or written advice.

XV. Conservation – Texas Oil and Gas Drilling**XVI. Litigation****XVII. Grants****XVIII. Cash Donations Greater than \$50,000: Individual donors from whom TNC has purchased land or interests in land, from FY 98 through FY 2002**

Has TNC ever entered into agreements with donors that provided TNC will indemnify or reimburse the donor for lost tax benefits from the loss or reduction of the charitable contribution deduction claimed by the donor? If so, please provide a copy of each such agreement.

New Questions:

The following questions are new questions generated by the Finance Committee investigation of TNC to date.

I. Functionally Related Revenue

1. List each specific and separate activity or program that generates program service revenue under the broad heading "Activity Fees," "Contract Fees," and "Fees and

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Contracts from Government Agencies.” (from statement 23 attached to TNC’s Form 990 for 2000 and 2001). Then, as to each item, explain in detail why such revenue is characterized as “Related or exempt function income.” Include in your answer a description of the types of services provided by TNC to other parties. Explain how TNC complies with the instructions to Form 990 for completion of Part VII and Part VIII of its Form 990 for 2001 and earlier years in that statement 23 failed to provide detail for each specific type of revenue received and failed to itemize the specific types of revenue. See 990 instructions, the example under Part VIII, page 32.

2. Please provide a list of lawyers, accountants and other outside counsel who have provided tax opinions or other tax advice to TNC with respect to the tax consequences to TNC or other parties regarding the activities described in the immediately preceding question (whether with respect to actual or hypothetical transactions); please provide a copy of such opinions or written advice.
3. Discuss whether for-profit businesses engage in some of the same activities as described in response to the preceding question 4. In particular, address your answer to activities under 93b and 93g of statement 23 attached to Form 990 for 2001.

II. Other Questions Regarding Revenues, Expenses and Form 990 Reported Items

1. The fiscal years 1992 through 1994 report no revenues from government contracts. Please explain what happened in 1995 that caused TNC to begin reporting government contract revenues.
2. Explain the Form 990 (2001) Statement 24 explanation regarding Cisco Systems, Inc./Mr. Morgridge transactions, and how the arrangement resulted in a 76% discount to TNC.
3. Explain TNC’s arrangement with General Motors described in the Form 990 (2001) Statement 24, p. 2 of 2, regarding the greenhouse gas mitigation offsets. Please provide a copy of TNC’s agreement with General Motors.
4. Please describe the “insurance proceeds” revenues reported as other revenues on Form 990, Part VII, line 103, and the basis for exclusion from UBI.
5. Please demonstrate how the tax-exempt bond financings reported on Statement 15 comply, and have at all times complied, with the Federal tax-exempt bond laws.
6. Provide a description of the contribution of the conservation easement by SMI to TNC that is reported on Schedule 24, Form 990 (2000), with regard to Mr. Ian Cumming.

III. Excess Benefit Transaction Issues

1. You stated in your answer to question 8 of our prior letter that the Board of Governors approves the compensation recommendation for the President/CEO in

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the January meeting. Since the compensation is effective for January 1, the compensation arrangement is not approved “in advance” (Reg. 53.4958-6T(a)(1)). Please comment. Attach copies of the minutes of January Board of Governors meetings approving the compensation of the President/CEO for the prior three years.

2. Were any loans made to any TNC officers, employees, or members of the Board of Governors treated as an economic benefit to the recipient as consideration for the performance of services where TNC clearly indicated its intent to treat the benefit as compensation within the meaning of section 53.4958-4T(c) of the regulations? If so, please discuss in detail and provide supporting documents.
3. In connection with your response to question 4 of our prior letter, state the title and salary of Graham Chisholm and indicate your view as to whether he is treated as a “disqualified person” within the meaning of section 53.4958-3T of the regulations. Provide a narrative discussion of the details of the shared appreciation note and attach a copy. Indicate the value of the property on purchase and attach a copy of the appraisal. Provide the employment contract and correspondence and other communications or memos describing his salary and job description.
4. TNC’s Internal Auditors Report as of November 30, 2001, with a release date of February 27, 2002 (“Report”), discusses, on page 4, two independent contractors who may be more appropriately treated as employees of TNC. The Report further indicated that one of the contractors received payments from TNC over 11 months totaling \$350,000 and that the contractor, if deemed an “employee” by the IRS would qualify as an “insider” by virtue of her position with TNC. (a) Identify the person; (b) state how long she has been associated with TNC and whether she continues to be associated with TNC as a contractor or employee; (c) indicate the period during which she served as a “contractor” with TNC; (d) state the amount of payments made to her over this period; (e) describe her duties, responsibilities and obligations to TNC in detail under the “contract” with TNC; (e) attach a copy of the contract(s) between her and TNC; and (f) attach all correspondence and other communication or memos relating to her relationship to TNC as a contractor or as an employee, including letters relating to her continued retention with TNC as either an employee or contractor as well as her termination.
5. a. Further, with respect to the “Report” described in the preceding question, comment on the assertions in the Report that, if deemed as an employee, she would qualify as an “insider” and her compensation could be viewed as excessive, thus possibly violating intermediate sanctions rules. b. Rev. Rul. 87-41, 1987-1 C.B. 296, provides a discussion of the employee – independent contractor issue. The Ruling lists 20 factors to be taken into consideration. Discuss each factor in connection with the “contractor” that is the subject of the preceding question. In addition to or as part of your answer to the preceding questions, please address the following: It is our understanding that she performed her work at TNC’s

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headquarters in Arlington, Virginia. Further, it is our understanding that her activities on behalf of TNC included hiring and supervising employees. It is our understanding that she not only had a long-term relationship with TNC as a contractor but she also had previously been an employee of TNC. Please comment and discuss in detail. c. Please provide all information in TNC's possession regarding this audit particularly in regards to filings with the IRS. d. Please explain in detail what actions TNC's board took in response to this audit. e. Please explain the employment history of this individual. Specifically, the timing and amount of payments made to this individual either directly or indirectly after the audit.

6. Submit a copy of the promissory note and mortgage signed by Mr. McCormick with respect to the loan to him by TNC dated May 22, 2002.
7. Did Mr. McCormick report the TNC loan to him as income on his Form 1040 prior to the commencement of an IRS examination of TNC?
8. Please provide a list of lawyers, accountants, and other outside counsel who have provided tax opinions or other tax advice to TNC with respect to the tax consequences to TNC or other parties regarding private benefit, private inurement, or excess benefit transaction tax issues (whether with respect to actual or hypothetical transactions); please provide a copy of such opinions or written advice.

Thank you for your time and assistance on this matter. If you have any questions, please contact Mr. Dean Zerbe at (202) 224-5315 or Mr. Jon Selib at (202) 224-4515. We would ask that the answers be provided in thirty days.

Cordially yours,

Charles E. Grassley
Chairman

Max Baucus
Ranking Member

Mercado Climate Action Project, and a copy of related transactional documents. We understand that \$9.6 million reportedly was invested in that deal by the various partners, and that E. Linn Draper, Chairman, President and CEO of AEP, was elected to serve on the TNC Board in October 1999.

- Do you have emissions credit arrangements with entities or persons other than GM or AEP? If so, please describe them and provide relevant documentation.

13. Please confirm the IRS has never conducted an examination or audit prior to the ongoing examination announced in December 2002.

14. Please provide any private letter rulings or other written advice sought or obtained by TNC from the IRS with respect to its CBP.

15. Please confirm whether TNC has provided a letter to the IRS notifying the IRS of any material changes in TNC's character, purposes, or methods of operation, since June 30, 1992 (the end of TNC's 1991 fiscal year). If TNC has provided any such letters to the IRS, please provide us a copy of such letters and any responses from the IRS.

16. Please provide any documentation in your possession regarding TNC's transactions with John P. Morgridge, the Morgridge Foundation, and Cisco Systems that relate to the Cisco Systems transactions that were described in TNC's Form 990 filings for 1998 through 2001.

17. Please provide an aggregate trade lands account reconciliation from 6/30/97 to 6/30/2003 (beginning account balance, book value of trade lands acquired, gains on trade lands, losses on trade lands, etc., ending balance). Confirm whether any writedowns in value to reflect lower of cost or value were made for trade land holdings during this period.

18. Conservation Beef, LLC (CBL) structure.

- Did CBL enter into a joint venture agreement, management agreement, or similar arrangement with PM Holdings LLC (PMHL) or another for-profit party with respect to the Conservation Beef project?¹ If so, please (a) provide a copy of the executed agreement, and (b) describe the arrangement between CBL and PM Holdings, including specifically the economic sharing arrangement and roles and responsibilities of the parties.
- How did TNC limit the development rights of ranchers who participated in the Conservation Beef program?
- Please provide a description of the Sun Ranch easement referred to in the April 19, 2004, CBL withdrawal agreement

¹ The form of agreement provided by TNC in its April 5, 2004, between CBL and PMHL was not signed.

- Provide a description of the land stewardship plans that CBL engaged in with respect to CBL ranchers' properties

19. Has TNC adopted a revised Conflicts of Interest Policy after that policy which was revised on October 2, 2002?

20. Many of the most serious Federal tax issues involving an exempt organization can arise when the exempt organization participates in a joint venture arrangement in which it does not own a controlling interest in the venture. Under TNC's recently adopted policies regarding related organizations and significant business holdings, approval of such ventures seems to rest with the President of TNC, rather than with the TNC Board of Governors. Is that a correct understanding, and if so, why is Board approval not required in such instances?

21. Please explain how the revised TNC policies regarding related organizations and significant business interests would apply to arrangements such as the GM-TNC emissions arrangement?

22. Why did TNC report between 19 and 21 corporate subsidiaries on a consolidated basis for its fiscal years 1992 through 1999, and then discontinue such consolidated reporting in its fiscal year 2000 Form 990? Did such entities constitute title holding corporations described within section 501(c)(2) that were includible corporations within section 1504(e)?

23. Please provide a copy of Form 990 and 990-T for fiscal year ended June 30, 2003.

24. Please clarify that TNC's response to Item XIV, Question 3, means that to the best of TNC's knowledge there were no legal opinions (tax or otherwise) regarding conflicts of interest issues provided to TNC with respect to the consequences to TNC or other parties regarding transactions between TNC and its board members, trustees, officers, executives or local chapter officials, and including organizations affiliated with any of such persons. Please explain whether TNC's conflicts of interest policy was reviewed by outside legal counsel.

25. Insider deals - Please provide documentation to demonstrate that the transactions reported on the Forms 990 as transactions with Board members (or affiliates of Board members) were approved consistent with TNC's internal conflicts of interest policy, and with any other relevant internal TNC policies.

26. Questions regarding Martha's Vineyard

- Why did the Wallaces make an \$18.5 million cash contribution to be used by TNC to pay purchase price back to the Wallaces, instead of selling the property to TNC for a bargain sale price of \$18.5 million less than the property's value?
- Why did TNC pay \$14 million to HCAC directly, rather than to the Wallaces to be used by the Wallaces to pay HCAC?

We appreciate The Nature Conservancy's continued cooperation and assistance in these matters. We would ask that you provide your response as quickly as accuracy permits.

Cordially yours,



Charles E. Grassley
Chairman



Max Baucus
Ranking Member

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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL
RUSSELL SULLIVAN, DEMOCRATIC STAFF DIRECTOR

April 21, 2005

Mr. Steven J. McCormick
President and Chief Executive Officer
The Nature Conservancy
4245 N. Fairfax Dr., Suite 100
Arlington, VA 22203

Dear Mr. McCormick:

As the Finance Committee seeks to complete its investigation of The Nature Conservancy (TNC), we would request TNC's response to the questions below. In addition, at our recent hearing on reforms of charitable giving and charitable governance, comments were made about the current state of affairs at The Nature Conservancy. While the Finance Committee's review has been focused on past practice, the comments have raised concerns that need to be addressed.

In that light, please provide the following:

1. For all conservation buyer transactions since the announcement of The Nature Conservancy's reforms of the program, on June 13, 2003, as well as the Block Island, Rhode Island project, please provide the following: the description and location of the relevant property, the dates of TNC's purchase and sale of the land; TNC's purchase price and its sale price for the parcel of land; the terms of the easement or other property limitation imposed on the property by TNC; if an easement or limitation is imposed please state whether that is for the protection of a natural habitat (and if so, please provide the justification and analysis) or for the preservation of open space (and if so, again please provide the justification and analysis supporting); the individual or entity that sold the property to TNC (and any relation to TNC); the individual or entity that bought the property from TNC (and any relation to TNC); what charitable contributions were made by the purchaser (or related party) to TNC; all documentation that has been provided or created by TNC under the new policy as to charitable gifts associated with the conservation buyer transaction; all appraisals of the property; any analysis in the possession or control of TNC regarding the tax treatment of the sale, purchase or donation; clearly define whether the easement is for open space, protection of natural habitat or other and the analysis that supports this designation; and, IRS Form 8283 and Form 8282. For the Block Island project, please provide all details about this project and specifically the relationship of any TNC staff, officers, directors or related parties to the land involved (not limited to just conservation buyer programs).

2. Regarding the current list of conservation buyer program properties listed on your website (available at "<http://nature.org/conservationbuyer/>") please provide a narrative description of the efforts TNC is making to market these properties to the general public. Of the properties on this list, how many (and which ones, if any) were acquired from persons or entities with which TNC had or has a relationship of some sort (e.g., State or local trustee, financial contract).

3. Please provide estimates of the amounts or values of cash or inkind contributions that have been made to TNC's conservation buyer fund since it was established, and state when it was established.

4. Please provide an estimate of the number of section 1031 like-kind exchanges that TNC has been a party to that have involved conservation buyer program properties in the last five years. We are seeking only those exchanges of which TNC has knowledge – and not asking the TNC to contact buyers to determine whether they were involved in a 1031 like-kind exchange.

5. Please provide information regarding whether TNC ever entered into any property acquisitions or dispositions for which Colorado conservation tax credits were claimed by a party to the transaction. Specifically, did TNC execute or participant in transactions in accordance with the opinions of May 23, 2002 and September 27, 2002 from Isaacson, Rosenbaum, Woods & Levy on the Colorado conservation tax credit. If so, please provide all the information for each transaction as was requested above in question 1 for the conservation buyer program.

6. Please provide a list of transactions or arrangements which have been brought before or reviewed by the relevant governing body (board or committee) pursuant to the governance, practice and policy reforms since they were implemented by TNC in 2003 and 2004. Also, please provide copies of all documentation regarding the review of such matters, and state whether the transaction or arrangement was approved, approved with conditions, deferred for further consideration or disapproved.

7. Please provide an estimate of the breakdown (based on aggregate dollar amounts per year, if available, or for the entire period) between conservation easements, trade lands, contributions of conservation properties (entire interests), contributions of publicly traded securities (stocks, bonds, mutual fund), contributions of tangible personal property and other types of in-kind property contributed to TNC during current and prior four fiscal years (or calendar years if more convenient for TNC).

8. Please provide a list of the donor advised funds that TNC has established over the past three years, including the name of the donor, the dates and amounts of the contributions to the fund, the type of property contributed, the relationship (if any) the donor has with TNC, the type of investment the fund has entered into, and the present account balance of the fund overall and for each individual. Also describe whether any of the individual fund balances have been used

for expenditures relating to donor review of the grants from the fund or investment of the fund balances. Please provide an estimate of the current aggregate donor advised fund balances that have been established by TNC. Please provide all policies of TNC in managing the donor advised fund.

9. Please provide an estimate of the aggregate dollar value and number of transactions, for which TNC has received conservation easements or other conservation restrictions for which donors expected or intended to claim a charitable deduction as a qualified conservation contribution under Code section 170(h), for each of the last three years, including a breakdown for each year based on the predominant conservation purpose: outdoor recreation by or education of the general public, protection of natural habitat, or preservation of open space.

10. Please explain the process pursuant to which TNC became involved in the various emissions credit or allowance arrangements. Did TNC approach the financial participants, was TNC approached by the financial participants, or were these arrangements structured and marketed by third parties such as law firms, accounting firms, or consultants. Please describe this process with respect to each of the eight arrangements you have reported to the Committee. Also, please explain how the approximately \$35 million of financial commitments made by the various financial participants in the emissions arrangements was reported by TNC on its Forms 990 (contributions, program service revenue, other). Has TNC completed, or is TNC involved in negotiations involving, any other emissions credit or allowance arrangements not previously reported to the Committee?

11. Please describe the activities used by TNC to solicit contributions of trade land properties, as well as the activities TNC conducts (directly or through its agents) to develop or sell such properties. Please provide a breakdown (based on approximate dollar amounts of sales or number of sales transactions) of commercial office buildings, personal residences, and other types of trade land properties. Please provide a list of trade land properties currently held by TNC with an appraised value exceeding \$100,000 and information regarding the date of acquisition by TNC, the type of property, and current asking price by TNC, with respect to such properties.

12. Martha's Vineyard: Please provide information regarding ownership of the following entities or parties to the transactions, including any changes in such ownership during contractual negotiations, as of the dates they were involved in the Martha's Vineyard transaction:

- owners of Windsor Capital Corporation
- owners of Herring Creek Acquisition Company, LLC
- owners of Real Estate Equity Limited Partnership
- owners or beneficiaries of the Herring Creek Farm Trust

13. As a follow-up to an earlier question in the March 3, 2004 letter (III. Excess Benefit Transaction Issues, Question 4) where the Finance Committee requested information about a TNC Internal Auditor Report, please provide the actual detailed receipts and related material of

every reimbursement provided to the contractor.

14. It is our understanding that TNC has (or had) several federal government contracts that require a match from TNC. Information provided recently to the Finance committee indicates that TNC may have included as part of its match the value of TNC paid employees who are working overtime. Please indicate for the last five years the amount of match that has been claimed in part, or in whole, with the overtime of TNC paid employees for a federal contract or grant; the specific federal contracts or grants for which this match has been claimed; and, the terms of the contract or grant of what is allowed to count as a match. For those contracts or grants requiring a federal match, please provide a breakdown of what constituted the match amount from TNC and all information provided by TNC to the relevant federal agency justifying/supporting the match. Finally, please provide any policy statements by TNC regarding the use of overtime of TNC paid employees for meeting a federal match.

15. Please provide your estimate of the number of TNC employees (on a full-time equivalent basis) who were responsible for analyzing and reviewing Federal income tax issues pertaining to TNC's Form 990 and Form 990-T filing responsibilities for each of the last five fiscal years.

16. Please explain the process used by TNC to determine whether it characterizes an activity as an unrelated trade or business activity for Federal income tax reporting purposes. Does this process involve input from local or State chapters as well as a review by company headquarters' employees. Please provide any legal or accounting analysis from the last five years, either internal or external, that was prepared for or assisted in deciding whether or not to characterize an activity as an unrelated trade or business activity for Federal income tax reporting purposes.

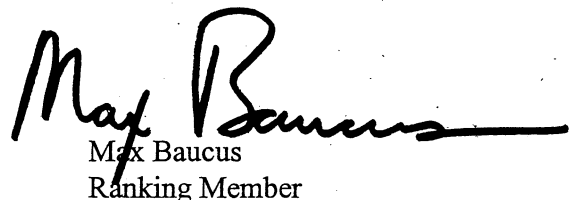
17. Is there any additional information that TNC wishes to provide at this time to supplement or alter any response or information TNC previously provided to the Committee as a part of this investigation?

Thank you for your time and assistance. So that the Finance Committee can conclude its work and in preparation for a hearing on TNC hopefully in late May, we would ask that this information be provided as it is available and no later than May 12, 2005.

Cordially yours,



Charles E. Grassley
Chairman



Max Baucus
Ranking Member